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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 BRIAN TERWILLEGER,

11 Plaintiff,

12 v.

13 WASHINGTON STATE  
14 DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES

15 Defendant.

CASE NO. 3:19-cv-05085-RBL-JRC

ORDER TO AMEND PROPOSED  
COMPLAINT AND RENOTING  
MOTION TO PROCEED *IN FORMA*  
*PAUPERIS*

16 Plaintiff Brian Terwilleger requests leave to proceed *in forma pauperis* (“IFP”) in this  
17 matter, which the District Court has referred to the undersigned. *See* Dkt. 8. The undersigned  
18 declines to grant plaintiff’s IFP motion unless plaintiff files a second amended proposed  
19 complaint that adequately states a claim upon which relief can be granted.

20 **DISCUSSION**

21 Plaintiff initiated this matter by filing an IFP application, which included a proposed  
22 complaint for violation of civil rights. *See* Dkt. 1-1, at 1. The District Court denied plaintiff’s  
23 application because his proposed complaint failed to state a claim upon which relief could be  
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1 granted. *See* Dkt. 4, at 2–3. Plaintiff then filed a “proposed motion for civil contempt,” which  
2 appears to be his amended proposed complaint. *See* Dkt. 5.

3 The district court may permit indigent litigants to proceed IFP upon completion of a  
4 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the “privilege of pleading *in*  
5 *forma pauperis* . . . in civil actions for damages should be allowed only in exceptional  
6 circumstances.” *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986). Moreover, the court has  
7 broad discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th  
8 Cir. 1963), *cert. denied* 375 U.S. 845 (1963). A federal court may dismiss *sua sponte* pursuant  
9 to Fed. R. Civ. P. 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which  
10 relief may be granted. *See Omar v. Sea Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (“A  
11 trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6) . . . . Such a dismissal  
12 may be made without notice where the claimant cannot possibly win relief.”).

13 Here, plaintiff’s amended proposed complaint continues to fail to state a claim upon  
14 which relief can be granted. It is unclear whether plaintiff intends to bring a cause of action  
15 under 42 U.S.C. § 1983 for a civil rights violation, as plaintiff initially alleged (*see* Dkt. 1-1), to  
16 institute a “civil contempt action,” or to take some other action.

17 If plaintiff seeks to bring a claim for civil contempt, his complaint is deficient because  
18 “there is no such thing as an independent cause of action for civil contempt.” *D. Patrick, Inc.*  
19 *v. Ford Motor Co.*, 8 F.3d 455, 459 (7th Cir. 1993) (quoting *Blalock v. United States*, 844 F.2d  
20 1546, 1550 (11th Cir. 1988) (*per curiam*)); *see also* 4 FED. PRAC. & PROC. CIV. § 1017 (4th ed.  
21 2019) (“Civil contempt proceedings are considered to be a part of the action that is the source of  
22 the order that is the subject of the noncompliance.”).

1 If plaintiff intends to bring a § 1983 action, it is inadequate because a state agency like  
2 defendant is not a “person” for § 1983 purposes. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990);  
3 *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989). Thus, if plaintiff intends to bring a §  
4 1983 action, plaintiff must identify a proper defendant or defendants, in addition to specifically  
5 articulating the other elements required for relief under § 1983. *See Crumpton v. Gates*, 947  
6 F.2d 1418, 1420 (9th Cir. 1991) (“Traditionally, the requirements for relief under [§] 1983 have  
7 been articulated as: (1) a violation of rights protected by the Constitution or created by federal  
8 statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.”).

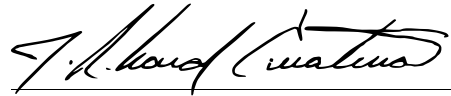
9 If plaintiff intends to pursue this action, he must file a second amended proposed  
10 complaint with a short, plain statement telling the Court: (1) the constitutional right that plaintiff  
11 believes was violated; (2) the name or names of the person or persons who violated the right; (3)  
12 exactly what each individual or entity did or failed to do; (4) how the action or inaction of each  
13 individual or entity is connected to the violation of plaintiff’s constitutional rights; and (5) what  
14 specific injury plaintiff suffered because of the individuals’ conduct. *See Rizzo v. Goode*, 423  
15 U.S. 362, 371–72, 377 (1976).

16 Plaintiff shall present the second amended proposed complaint on the form provided by  
17 the Court, if he intends to file a § 1983 action. The second amended proposed complaint must be  
18 legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should  
19 contain the same case number, and it may not incorporate any part of the other proposed  
20 complaints by reference. The second amended proposed complaint will act as a complete  
21 substitute for any prior proposed complaint, and not as a supplement. An amended complaint  
22 supersedes all previous complaints. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.  
23 1997) *overruled in part on other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir.  
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1 2012). Therefore, the second amended proposed complaint must be complete in itself and all  
2 facts and causes of action alleged in any other proposed complaint that are not alleged in the  
3 second amended proposed complaint are waived. *Forsyth*, 114 F.3d at 1474.

4 If plaintiff submits an adequate proposed complaint, then the Court will consider his  
5 motion to proceed IFP. The Clerk shall renote plaintiff's IFP motion for consideration on **June**  
6 **21, 2019** and shall provide plaintiff with the form for a § 1983 complaint. Plaintiff shall file a  
7 second amended proposed complaint no later than June 21, 2019. Failure to file the amended  
8 proposed complaint will result in the undersigned recommending denial of plaintiff's motion to  
9 proceed IFP. Denial of the IFP motion and failure to pay the filing fee will result in dismissal of  
10 this matter.

11 Dated this 20th day of May, 2019.

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13 J. Richard Creatura  
14 United States Magistrate Judge  
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